

BOARD OF HEALTH.

HELD AN INTERESTING MEETING YESTERDAY.

Important Reports Read and Discussed.
A Proposition to Send Lepers Here Referred to the Government—Valuable Suggestions from Dr. Thompson.

The board of health met Wednesday afternoon at 3 o'clock.

There were present W. O. Smith, president, John Ena, Dr. Day, J. T. Waterhouse, Jr., Dr. Andrews, J. O. Carter and Agent C. B. Reynolds.

The minutes of the previous meeting were read and adopted.

The special committee appointed to consider the question of wash house sites handed in the following report:

HONOLULU, H. I., May 16, 1893.

The undersigned, members of the board of health, have to report that they visited the immigration depot at Kakaako, to ascertain whether the buildings and premises could be used as wash houses, and have to report that in their opinion it is not desirable to make such use of the buildings.

Geo. C. Andrews,
J. O. CARTER,
J. ENA.

The special committee appointed on opium pills made a verbal report. The executive officer of the board said he had not yet received the results of analysis of the pills from Prof. Lyons, government chemist. It was also stated the custom house was not yet ready to receive the opium from the police station.

The following report of G. W. C. Jones, Inspector of slaughtering, was read and filed:

OFFICE OF THE HAWAIIAN BOARD OF HEALTH,

HONOLULU, H. I., May 17, 1893.

C. B. REYNOLDS, Esq., Executive Officer of Board of Health.

SIR: My report of inspection for the week ending May 16, 1893, is as follows:

At the slaughter-house, Kahooloa, there have been inspected 138 bullocks, 15 calves and 282 sheep. Twenty-nine Maui and 8 Molokai bullocks were free from disease; 21 head from Hawaii had 2 with abscess of liver, the rest good; 45 head from Oahu had 12 sound, 32 with the fluke disease and 1 with abscess of liver; of 35 head from Kahoolawe 8 had abscess either of the liver or of parts attached to it. Dr. Andrews examined one of these cases. Most of the Kahoolawe livers were condemned from their unhealthy appearance. Some of the Oahu cattle that were sent by train were badly bruised and portions of them were condemned.

Ten calves from Maui and 8 from Molokai were in good condition.

The sheep were from Hawaii and Kahoolawe and were received on the 6th and 9th inst. Quite a number of them began to droop within the last day or two and have been killed off. Dr. Andrews visited the slaughter-house at my request and examined some of the animals.

The same received from the other islands were in better order than usual, and I hear of no disease in the lot now on hand.

The fish market has been visited daily. No complaints have been made to me of the quality of the fish or meat offered for sale.

Under the law to mitigate there have been three examinations with an attendance of twenty-seven persons. Respectfully yours,

G. W. C. JONES.

Dr. Andrews stated that he had made a thorough examination of the sheep mentioned in the report, and had found them to be healthy. He had carefully examined the drooping sheep, and was of the opinion it was the result of a parasitic insect, and not abscess. He had had a sheep killed and dressed in his presence, and found it was sound and healthy.

Executive officer Reynolds reported verbally on the vaccine farm, stating that several sites could be secured, one of which was at the Queen's Hospital.

Mr. Waterhouse thought if the hospital site was wanted, the matter could be laid before the meeting of that institution, to be held tomorrow (today).

Dr. Day thought that the location of the farm at the hospital would have a good effect on the community. In answer to a question, he said fresh virus could be had monthly at Benson, Smith & Co's.

Executive officer Reynolds reported that the medicated water to be used at the leper settlement would have to be reheated, and arrangements therefor would have to be made. After considerable discussion, the matter was referred to Dr. Goto and the agents of the board at Kalaupapa.

It was ordered that the board pay one fare each way for Dr. Goto per month.

Dr. Day spoke of the importance of keeping records of the patients to be treated at the hospital, and illustrated the difficulty of working without such a record of the special cases treated.

Tenders for the sale of hides and tallow by the board were opened by President Smith.

The contract was awarded to Mr. F. F. Porter at 5 cents per pound for green hides, and 4 cents for tallow, and the secretary was ordered to notify him.

A letter from John Kamani, containing a long list of complaints, was referred to Superintendent Meyers.

A letter from Mr. Smith protested against making the new reservoir, and asked that the board furnish lepers with firewood at half-price. Rev. Mahakoa asked that his wife,

not a leper, be permitted to travel between the settlement and other posts. Referred to Mr. Meyers for a special report.

A report on examination at schools was read from Dr. N. Russell, of Waianae, Oahu. The report was filed, and he was informed that the virus would be sent for vaccination soon.

The following report from Dr. L. D. Thompson was read:

NORTH HILO, HAWAII, MAY 1ST, 1893.

CHARLES WILCOX, Esq., secretary, board of health.

Dear Sir: Please find herewith my report for month of April. I thank you for your kindness in loaning me the work on leprosy, which I am reading with much interest and will return by next mail. I hope I will not be considered too officious if I call the attention of the honorable board of health to the fact that under the present law it is possible for a person to be sick, die and be buried, without the knowledge of the health officer or police department, to which fact my attention has been specially directed twice during the last month by as many deaths. Is it not now a good time to make a law demanding or requiring a certificate of cause of death from some graduate in medicine before burial can be permitted? With so many physicians on the board it is of course apparent that such a law is needed in a country infested with kahuna and charlatans as this is. All other countries that I have any knowledge of have such a law, and consider it one of the greatest obstacles to crime. If I have taken too much interest in this matter I hope I do not make myself obtrusive. The Provisional government could easily pass such an act, and I think the community at large would appreciate it. I have the honor to be,

Your obedient servant,

L. D. THOMPSON.

The report was tabled for further consideration.

Another letter from Dr. Thompson on the treatment of leprosy was read and referred to the medical committee of the board.

The question of passing fifteen cases of Japanese medicine through the custom house was discussed. The bill for the medicine was \$877.50. Ordered the board pay for ten cases. Final action postponed.

A letter from Agent Stolts was read regarding the lepers now residing at Kalaupapa, Kauai. He asked for authority to carry out instructions of the board. Ordered that he be commissioned to act for Niihau and Waimea district, Kauai.

The matter of allowing the Wailuku hospital to connect with a certain water pipe was referred to the board's agents at that place.

A letter of complaint was read from Mr. L. Way.

It was stated the minister of the interior had granted permission to use Beretania hall at Kalaupapa for public entertainments, under certain limitations.

President Smith stated the postmaster general was not yet ready to report on a money order office at Kalaupapa.

Assistant Superintendent Hutchinson reported the buildings for Dr. Goto's treatment would be ready next week.

An application from the assistant keeper at Kalaupapa to be reinstated in his position was received and filed.

President Smith read the following letter from Mayor Elliott of San Francisco, handed the board by Claus Spreckels:

CLAUS SPRECKELS, Esq. — Dear Sir: A few days since I addressed a communication to F. S. Pratt, Hawaiian consul-general at this port, in relation to the lepers we have confined at the pesthouse in this city. The purport was that we have here about twelve of these unfortunate creatures, and the facilities are inadequate to their proper care. I understand that there is in the Hawaiian Islands a colony of some hundred lepers, where special attention is given them such as varied experience with this peculiar disease suggests as the most practical for the treatment and the comfort of the afflicted.

In view of this fact I suggested to Mr. Pratt that the city and county of San Francisco would like to arrange with the Hawaiian government to take charge of the lepers at present here. A reasonable compensation would be allowed during their stay in the colony, and we could readily arrange for their transportation. Mr. Pratt has forwarded the communication to his government for its consideration.

My object in writing is to interest you in the matter, and to ask you, as one of the city's prominent citizens, to use what influence you can toward a completion of the arrangement. You know the difficulties we labor under in this matter, and I am sure you can fully appreciate the advantages of an arrangement of this kind to all parties concerned.

Hoping you will give this request due consideration, and trusting to hear from you at an early date, I remain, yours truly,

L. R. ELLIOTT,

Mayor of San Francisco.

President Smith stated the minister of foreign affairs had received a letter from Consul Pratt to the same effect. It was also mentioned that Paul Neumann had been approached a month ago on the same matter.

The board determined they cannot act in the premises, and referred the matter to the government. The secretary was ordered to notify Claus Spreckels of their action.

President Smith presented a copy of the "Quarantine Laws of the United States" for 1893. Referred to the Quarantine committee.

Seeds of the blue gum and iron wood were presented by Commodore Mendenhall, for planting at the settlement for a windbreak.

Adjourned at 4:20 p. m.

Among the incidents of childhood that stand out in bold relief, as our memory reverts to the days when we were young, none are more prominent than the vivid memories that it was Chamberlain's Cough Remedy cured our cough, and in turn administered it to her own offspring and always with the best results. For sale by all dealers, BROWN, SMITH & Co., Agents, Druggists.

In the Supreme Court of the Hawaiian Islands.

SPECIAL TERM, APRIL 20, 1893.

In the Matter of the Application of GEORGE TYROOME for a Writ of Habeas Corpus.

BEFORE JUDD, C. J., BICKERTON AND FREAR, JJ.

There is no offense known to our law as "an assault with a dangerous weapon." A verdict, the nature of the corresponding finding the defendant guilty of such an offense, is void. The sentence must be void upon its face in order to entitle the petitioner to a discharge on "habeas corpus."

If a sentence within the jurisdiction of the Court and regular on its face, be found by an inspection of the record to be not responsive to the indictment, it is voidable and can only be set aside on appeal or by a writ of error, and is not cognizable on "habeas corpus."

OPINION OF THE COURT BY JUDD, C. J.

This is an appeal from Judge Whiting of the Circuit Court, First Circuit, refusing to discharge the petitioner from the custody of the Marshal, the case, in his opinion, disclosing errors not cognizable on habeas corpus. The petition sets forth that petitioner was, at the March Term of the Circuit Court, Fifth Circuit, sentenced to pay a fine of \$25 and be imprisoned at hard labor for the term of two years for the offense of assault with a dangerous weapon. The mittimus under which the petitioner is held describes the offense as "assault with a dangerous weapon." The petition avers that his imprisonment and restraint are illegal because there is no such offense known to our law. The return by the Marshal to the writ is that the petitioner was convicted before the said Circuit Court for that, being armed with a dangerous weapon, to wit, a loaded pistol, he did assault certain persons (naming them) with intent to kill and murder, etc. The record shows that the indictment was for the offense set forth in the return. The written verdict of the jury is, "We find the defendant guilty of the offense of an assault with a dangerous weapon," or, as it is literally, "a weapon capable of taking life." ("Ke hooholo nei makou na hoahewa ka mea i hoopiia no ka hewa hewa e hoeha me ka mea ku i ka make.")

The clerk entered upon his minutes that the verdict was "Guilty as charged."

The first question to be considered is, which is the verdict;—that presented by the jury, or as entered by the clerk? We have no hesitation in holding that the former must be considered as the verdict. By our present practice the verdict is written, handed by the foreman of the jury to the Court, who reads it aloud to them and asks if they assent to it. This is a public act, and it is required by our statutes that the jury shall find a verdict. It need not be in writing, but the present practice so requiring it is proper and not inconsistent with the law. The entry of the verdict by the clerk as understood by him is but his private interpretation of the meaning of the verdict, and cannot be held to contradict the written verdict passed up by the foreman. It might be otherwise if the verdict was oral, recorded by the clerk and then read by him from his minutes to the jury and assented to by them.

We pass now to the next question. Does this verdict disclose an offense known to the law? The defendant was indicted for an offense described in Section 5 of Chapter IX. of the Penal Code, to wit, an assault by a person armed with a dangerous weapon upon another "with intent to commit burglary, robbery, manslaughter or murder, or other crime of such character."

The verdict of the jury found the defendant guilty of an "assault with a weapon dangerous to life." It leaves out the essential ingredient of the offense—the intent to commit the crime, which in this case was, as by the indictment, murder. The verdict was a special one, undertaking to describe the particular offense of which the jury found the defendant guilty. If the verdict read, "We find the defendant guilty as charged" there would be no difficulty, and the mittimus would describe the offense as set out in the indictment. It is suggested that the jury intended to find the defendant guilty of the offense described in Section 8 of said Chapter IX. of the Penal Code, to wit, an assault upon another "with a knife, sword cane or any other weapon obviously and imminently dangerous to life" no intent to do anything more being found. But the objection to this view is, that "an assault by a person armed with a dangerous weapon" cannot be considered as identical with "an assault with a weapon obviously and imminently dangerous to life," as the latter weapon would require no proof of its character, since an inspection of it or a description of it would make its character apparent to the jury, whereas the term, "a dangerous weapon" would include a larger class of weapons, some of which would not be obviously and imminently dangerous to life. Moreover, it is not required of necessity that the assault under Section 5 shall be shown to have been committed with the "dangerous weapon" with which the defendant is armed. And certainly in the case where the

assault is made with intent to commit burglary or robbery it might well be that though armed with a dangerous weapon the assailant might not use it in making the assault. We do not consider it a refinement of language to hold that a verdict of guilty of an assault with a weapon dangerous to life would not answer the description of the offense of an assault with a weapon obviously and imminently dangerous to life. And it follows that the mittimus does not disclose an offense known to the law. If it did and found the defendant guilty of an assault with a weapon obviously and imminently dangerous to life, we would not be authorized on proceedings in habeas corpus to inquire further into the matter and ascertain whether such verdict was responsive to the indictment. The verdict as rendered is void. The verdict above suggested would be voidable and if, though good upon its face and being within the jurisdiction of the Court, a comparison of the indictment with the sentence shows that the sentence is not responsive to it, the Court would be authorized on error to reverse it. This, we apprehend, is the distinction between defects which can be inquired into on habeas corpus and those errors which are cognizable only by appeal or by writ of error.

"A Writ of Habeas Corpus cannot be made to perform the functions of a Writ of Error. To warrant the discharge of the petitioner, the sentence under which he is held must be not merely erroneous and voidable, but absolutely void." *Ex parte Reed*, 100 U. S. 23. This Court, per Preston, J., held in the case of Piihilani, 7 Haw. 104, as follows: "We are of the opinion that when a mittimus is good upon its face, and the prisoner is in execution under a conviction, a writ of habeas corpus should not issue, but that the prisoner should be confined to his right of appeal and that a conviction or judgment cannot be attacked in a proceeding on habeas corpus if jurisdiction appears by the record." "We think that in all cases in which the mittimus is insufficient upon its face, the discretion to issue the writ should be exercised, but that it is only when the record does not supply the omission that the prisoner shall be discharged."

In the case before us the record corresponds with the mittimus, and as both are illegal the petitioner is entitled to his discharge. We wish to add that we do not hold that if a person is charged under Section 5 of the Chapter on assaults (Chap. 9, Penal Code) the jury would be warranted in finding him guilty of the offense described in Section 8, as it does not appear to us that these are different degrees of the same offense, but substantially different offenses. In the assault under Section 5, the intent to commit a greater crime is an essential ingredient. Under Section 8, the character of the instrument with which the assault is made is essential, and the intent with which the assault is made is not essential.

Let the prisoner be discharged. A. S. Hartwell for petitioner; Attorney-General Smith for respondent.

Honolulu, May 3, 1893.

A New Doctor.

Dr. H. M. Howard, lately appointed government physician for Hanelei and Kawaihau districts, Kauai, arrived last week. He was present at the meeting of the board of health Wednesday afternoon, where he listened with great interest to the discussion relating to affairs at the leper settlement. Dr. Howard is a brother of Mrs. Dr. Nichols of Honolulu, and is accompanied by his wife.

Advices have been received from Ed. Hopkins, advance agent of the Hawaiian National band, that he expected to complete all the necessary arrangements for taking the band on a tour through the United States, so that he could return on the Monowai, and that the band might hold itself in readiness to leave on the return steamer.

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"By the third day all trace of

"blood had disappeared and I had

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"fourth day I sat up in bed and ate

"my dinner, the first solid food for

"two months. Since that time I

"have gradually gotten better and

"am now able to move about the

"house. My death was daily ex-

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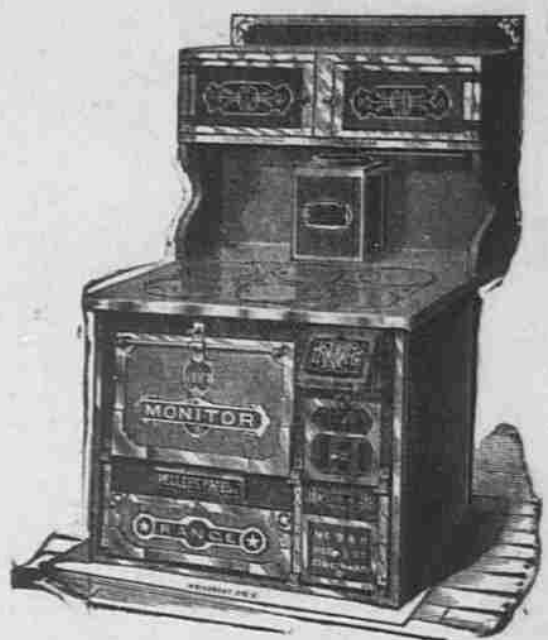
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